



[Docket No. FR-6336-N-01]

**Request for Information for HUD's Community Development Block Grant Disaster Recovery (CDBG-DR) Rules, Waivers, and Alternative Requirements**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Housing and Urban Development (HUD) seeks public input to strengthen and improve requirements for entities receiving and implementing Community Development Block Grant Disaster Recovery (CDBG-DR) funding. This Request for Information (RFI) is to solicit feedback to inform how the Department can modify, expand, streamline, or remove CDBG-DR rules and requirements with the goals of expediting long-term resilient recovery, reducing, or eliminating barriers for impacted beneficiaries, ensuring equitable community recovery, and simplifying compliance for CDBG-DR grantees within its statutory authority. Additionally, HUD seeks information and recommendations to reduce the administrative burden for those receiving and implementing CDBG-DR funding after a disaster to accelerate the availability of assistance to disaster survivors and affected communities.

**DATES:** Comments are requested on or before [INSERT DATE SIXTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.] Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Interested persons are invited to submit comments responsive to this Request for Information (RFI). All submissions must refer to the docket number and title of the RFI. Comments may include written data, views, or arguments. Each individual or organization is encouraged to submit only one response and to limit its submission to 10 pages in 12-point or larger font, with a page number provided on each page. Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses should

include the name of the person(s) or organization(s) filing the comment but should not include any personally identifiable information.

There are two methods for submitting public comments.

1. **Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <https://www.regulations.gov>.
2. **Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

HUD strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <https://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

*Public Inspection of Public Comments.* All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. EST weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an

accessible telephone call, please visit:

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at

<https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jessie Handforth Kome, Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410-0500, telephone number (202) 708-3587. Facsimile inquiries may be sent to Ms. Kome at (202) 708-0033. (The telephone and fax numbers are not toll-free numbers). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Email inquiries may be sent to [DRSIPolicyUnit@hud.gov](mailto:DRSIPolicyUnit@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Overview of CDBG-DR Funding**

Since 1993, Congress has periodically funded CDBG-DR grants through emergency supplemental appropriations acts. CDBG-DR funding is not authorized through standing statute, but instead was created through these emergency appropriations acts premised on the annual (non-disaster) CDBG program. While the grants are largely subject to the statutes and regulations governing the non-disaster CDBG programs, each appropriations act that has made CDBG-DR funds available has provided the Department with the authority to waive those requirements and establish alternative requirements, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. This broad authority enables the Secretary to establish waivers and alternative requirements to support resilient recovery from individual disasters or a particular group of disasters.

HUD is seeking to adopt a revised process for implementing future CDBG-DR grants to assist potential CDBG-DR grantees (*i.e.*, states, local governments, and Indian tribes (as that term is defined in section 102(a)(17) of the Housing and Community Development Act of 1974) (HCDA)), recipients, and the public in planning for the use of the funding. To achieve this goal, HUD intends to publish a comprehensive notice that would standardize the CDBG-DR allocation and implementing notice process and inform potential CDBG-DR grantees, recipients, and other stakeholders about each phase of the CDBG-DR grant process (*i.e.*, a “CDBG-DR Universal Notice”). The planned CDBG-DR Universal Notice would address a number of aspects of the CDBG-DR funded disaster recovery and mitigation process including: 1) grantees’ pre-award submissions; 2) steps and timelines; 3) action plan development, submittal, and implementation; and 4) applicable waivers and alternative requirements. The objective of the planned CDBG-DR Universal Notice would be to outline comprehensive and uniform requirements that will govern subsequent allocations of supplemental CDBG-DR funding to provide disaster recovery assistance in a more predictable, equitable, and timely way.

When Congress enacts new supplemental appropriations of CDBG-DR funding, HUD will incorporate the applicable provisions of the CDBG-DR Universal Notice, to the extent the CDBG-DR Universal Notice is consistent with the appropriations act, in a separate published notice (the “Allocation Announcement Notice”). Each Allocation Announcement Notice will announce the new CDBG-DR allocations and impose the applicable waivers and alternative requirements in the CDBG-DR Universal Notice for the subject CDBG-DR grants. Each Allocation Announcement Notice will also modify the CDBG-DR Universal Notice as necessary to comply with any new statutory requirements. For example, a Public Law may allow grantees receiving an award for a specific disaster year to access funding for program administrative costs prior to the Secretary’s certification of financial controls and procurements processes, and adequate procedures for proper grant management. If a new provision like this is included in a CDBG-DR appropriations act that is different from prior appropriations acts, the requirements

governing the provision would not be covered in a CDBG-DR Universal Notice and would need to be addressed in an Allocation Announcement Notice (amending the CDBG-DR Universal Notice, if necessary). The Department modeled this process in the Allocation Announcement Notices published on February 3, 2022 (87 FR 6364) and May 24, 2022 (87 FR 31636) for grantees receiving funds for disasters occurring in 2020 and 2021 and included a CDBG-DR Consolidated Notice as an appendix.

#### Objectives of a CDBG-DR Universal Notice

The focus of CDBG-DR grant funds is to address long-term housing recovery and other needs including infrastructure, economic revitalization, and mitigation activities, particularly serving the most vulnerable communities. In its FY2023 budget proposal, the Administration has articulated principles for these grants, finding that CDBG-DR is uniquely positioned to advance equity and prioritize disadvantaged communities, turning disaster-impacted neighborhoods that have historically faced underinvestment into resilient, healthy, sustainable, thriving communities. CDBG-DR's role in long-term housing recovery prioritizes and integrates resilient investments that mitigate the effects of future natural disasters, which will significantly reduce future fiscal and social costs.

Through a Universal Notice, HUD seeks to:

- Outline a uniform set of waivers and alternative requirements designed for future allocations of CDBG-DR funds, including all timelines, documentation, and other requirements for pre-award grantee submissions;
- Encourage intentional and early coordination among potential CDBG-DR grantees, other agencies/departments at the state or local level, and other regional or local planning efforts to better align disaster recovery assistance with the goals of regional development plans, resilience plans, and state and local Hazard Mitigation Plans;
- Consistent with the principles of the Administration's Justice40 initiative, increase opportunities for planning to expand awareness of the availability of disaster recovery assistance

and to advance equitable distribution of assistance, including community engagement efforts, and planning for targeted assistance to residents of disadvantaged communities (e.g., a Promise Zone, a Neighborhood Revitalization Strategy Area) that are underserved, members of protected classes under fair housing and civil rights laws (i.e., race, color, national origin, religion, sex – which includes sexual orientation and gender identify – familial status, and disability), and other vulnerable populations who have been historically marginalized and can be adversely affected by disasters that often exacerbate existing inequities (e.g., racial and ethnic minorities, the elderly, persons experiencing homelessness, etc.); and

- Improve long-term community resilience by fully integrating resilience planning and hazard mitigation activities into disaster recovery to reduce the impacts of climate change and future disasters, encourage nature-based recovery efforts (focusing on healthier water and air, and effective debris and waste management), address environmental justice concerns associated with disaster recovery efforts, and address recovery needs for accessible, resilient, and affordable housing for low- and moderate-income persons.

- Assist in making measurable progress to reduce fiscal exposure to climate change and its effects for the Federal government, states, and local governments. This effort is consistent with the High-Risk Report in 2019, in which the General Accountability Office (GAO) noted that “numerous studies have concluded that climate change poses risks to many environmental and economic systems and creates a significant fiscal risk to the federal government.” More broadly, the notice will be designed to support the policy of the Administration to combat the climate crisis by implementing a government-wide approach that: reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

## **II. Purpose of this Request for Information**

The purpose of this RFI is to solicit feedback to inform how the Department can strengthen CDBG-DR requirements and to accelerate the availability of assistance to disaster survivors, consistent with the principles of the Administration as outlined in its FY2023 budget proposal in support of CDBG-DR authorization. HUD seeks information and recommendations to expedite long-term recovery, reduce or eliminate barriers, ensure equitable outcomes, and simplify compliance for CDBG-DR grantees within its statutory authority.

To expedite long-term recovery, Congress has historically authorized HUD to modify certain requirements by establishing waivers and alternative requirements, except for requirements related to fair housing, nondiscrimination, labor, and the environment. However, HUD may not waive or establish an alternative requirement on any provision established by an appropriations act. Therefore, HUD is most interested in proposed changes that are within its statutory authority provided by Public Law 117-43, the appropriations act that funded CDBG-DR assistance for 2020 and 2021 disasters. Comments that seek to identify statutory limitations that delay or hinder recovery are also welcome and HUD may submit these comments to Congress for consideration.

HUD encourages participation from disaster survivors, Federal, state, local, and Tribal governments, nongovernmental organizations, the private sector including small businesses, and other stakeholders (*e.g.*, emergency managers; renters; homeowners; multifamily-housing owners; public-housing agencies; academic researchers; urban planners; engineers; fair housing professionals; disaster recovery professionals; and organizations that advocate for affordable housing, members of protected classes, vulnerable populations, and underserved communities).

### **III. Specific Information Requested**

While HUD welcomes comments on all issues associated with streamlining and accelerating the implementation of CDBG-DR funds, HUD is particularly interested in receiving information, data, analyses, and recommendations on the topics outlined below, which focus on changes that are generally within HUD's statutory authority. The appropriations acts typically

authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers of CDBG-DR funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. The list of questions below is a non-exhaustive list and is intended to assist commenters in formulating their responses. This list is not intended to limit the issues or topics that commenters may address. HUD has organized this list into a series of questions to solicit targeted feedback regarding specific topics.

1. Reducing Administrative Burden and Accelerating Recovery.

a. Are there CDBG-DR rules<sup>1</sup>, waivers, or alternative requirements that are unnecessarily complicated? Please provide recommendations for how such rules and requirements should be revised.

b. Are there CDBG-DR rules, waivers, or alternative requirements that could be streamlined or removed to enable grantees to accelerate recovery? Please provide recommendations for alternative processes that would remove barriers, obstacles, and delays.

c. Are there CDBG-DR rules, waivers, or alternative requirements that can be modified, expanded, or removed to reduce administrative burden for beneficiaries?

d. Are there CDBG-DR rules, waivers, or alternative requirements that could be streamlined or removed to accelerate recovery for grantees receiving smaller awards, or grantees that are funding primarily small and rural communities? For example, in a Federal Register notice published on May 24, 2022, HUD identified any grant under \$20,000,000 as a smaller grant award. Going forward, is \$20,000,000 an appropriate threshold?

e. Should there be a minimum allocation threshold for CDBG-DR grant awards? If so, what should the minimum allocation threshold be or be based on?

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<sup>1</sup> While CDBG-DR funds do not have disaster-specific regulations, in past Federal Register notices, HUD has imposed applicable State and Entitlement CDBG regulations at 24 CFR part 570 on the use of CDBG-DR funds and issued any necessary waivers and alternative requirements of these regulations.



f. Recent appropriations allow grantees to access funding for program administrative costs prior to the Secretary's certification of financial controls and procurement processes and adequate procedures for proper grant management. Grantees have used these administrative funds primarily for the development of the action plan (e.g., procuring contractors, increasing capacity, facilitating public participation, etc.). Aside from creating the action plan for program administrative costs, are there other approaches that HUD should consider to promote proactive coordination with other disaster response agencies before a CDBG-DR grant is executed?

g. Are there any activities that are currently ineligible in CDBG and are either not funded by other disaster recovery agencies or not fully funded, but that are so critical to meeting recovery-related needs that it may be important to permit them through an alternative requirement to advance a more resilient and equitable recovery?

h. Are there CDBG-DR rules, waivers, or alternative requirements that should be revised to better align with federal disaster relief programs implemented by the Federal Emergency Management Agency (FEMA), the U.S. Small Business Administration, the U.S. Army Corps of Engineers, or other Federal agencies? Are there CDBG-DR rules, waivers, or alternative requirements that should be adopted by other Federal disaster recovery agencies?

i. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act) and CDBG-DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). How can HUD and other Federal agencies that provide disaster assistance make it easier to comply with DOB requirements?

j. What data should grantees report to HUD to improve public transparency and to better allow evaluation of the use of CDBG-DR funds consistent with the principles of the Administration's Justice40 initiative to increase federal support for disadvantaged communities (e.g., requiring grantees to report to HUD on the race and ethnicity of those who apply for

assistance but are not ultimately served)? How might the administrative burden of reporting be reduced?

k. What types of technical assistance should HUD offer grantees to support a timely, equitable, resilient, and successful recovery? Are there phases of CDBG-DR grants (e.g., initial administrative work, action plan development, program implementation, etc.) where providing more intensive technical assistance would be more effective? What types of technical assistance should States offer local government subrecipients to support a timely, equitable, resilient, and successful recovery?

l. What types of technical assistance or other measures should HUD offer to better assist grantees in preventing and identifying potential contractor fraud and to strengthen the ability of grantees to assist beneficiaries when they are subject to contractor fraud?

m. What mitigation techniques or requirements could HUD employ to enhance grantee capacity to comprehensively assess the likelihood of potential fraud risk and to otherwise detect and prevent fraud in grantee programs?

## 2. Establishing Priorities.

a. Should CDBG-DR rules, waivers, or alternative requirements be written to 1) encourage or require grantees to first address disaster recovery housing needs prior to other recovery needs (e.g., infrastructure), or 2) encourage or require grantees to invest in whole community recovery in proportion to its unmet recovery need (e.g., housing, infrastructure, economic revitalization, and mitigation)?

b. If CDBG-DR should encourage grantees to invest in whole community recovery, what policy incentives would be most effective to encourage grantees to invest in whole community recovery in proportion to its unmet recovery need?

c. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified or eliminated so that grantees are prioritizing assistance to low- and moderate-income persons and areas, vulnerable populations, and underserved communities?

d. How can HUD assist grantees in using data-driven information to better align their proposed recovery programs and activities with unmet recovery needs? (HUD is also seeking public comment on how it defines and determines unmet recovery needs in a separate request for information. Please see the RFI requesting information on the CDBG-DR allocation formula published elsewhere in today's *Federal Register*.)

e. How can CDBG-DR rules, waivers, or alternative requirements be modified or eliminated to encourage greater levels of investment in infrastructure projects that provide the greatest benefit to impacted low- and moderate-income areas?

f. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified or eliminated so that grantees carry out activities to support economic revitalization for underserved and economically distressed communities?

g. How can CDBG-DR rules, waivers, or alternative requirements be modified or eliminated to better address the unmet recovery and mitigation needs of affordable rental housing, public housing, and housing for vulnerable populations?

h. How can CDBG-DR rules, waivers, or alternative requirements be modified or eliminated to allow grantees to leverage private capital (e.g., bridge loans) to start the long-term recovery process immediately after a disaster?

### 3. Understanding the Requirements for Most Impacted & Distressed (MID) Areas.

Currently, CDBG-DR appropriations acts require all funds to be used in a most impacted and distressed (MID) area resulting from a major disaster. Current rules attempt to balance requirements in the appropriations acts to make allocations to HUD-identified MID areas while also providing grantees with flexibility to capture additional areas that the grantee can determine is also a MID area, using data or information that is not available to HUD.

a. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified or eliminated to clarify the differences between the HUD-identified MID area and the grantee-identified MID area?

b. Are there specific parameters, data, or other criteria that should be established by HUD for a disaster-impacted community to qualify as a grantee-identified MID Area? Please provide recommendations for specific parameters, criteria, or limitations that should be established.

c. Should HUD continue to allow for the use of CDBG-DR funds to benefit grantee-identified MID areas? How, if at all, should HUD adjust the requirements for the balance of assistance between HUD-identified and grantee-identified MID areas?

#### 4. Developing the Action Plan.

a. What CDBG-DR rules, waivers, or alternative requirements relating to the action plan, if any, should be modified or eliminated to capture unmet disaster recovery needs or mitigation needs more accurately?

b. HUD currently requires grantees to post an action plan for 30 days to solicit public comment and to host at least one public hearing – is this enough time to solicit meaningful public feedback? Should HUD consider increasing this time or the number of public hearings required for initial action plans and/or for later, substantial amendments to the action plan to achieve meaningful community engagement?

c. What enhancements should HUD consider to improve a grantee's experience with the HUD's Disaster Recovery Grant Reporting (DRGR) system and data reported by grantees, in particular the Public Action Plan module?

#### 5. Advancing Equity.

a. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified or eliminated to ensure grantees equitably allocate resources and adequately address disaster-related needs of the most impacted, vulnerable, and underserved communities?

b. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified or eliminated to ensure that grantees advance equity in the timing of who is able to receive assistance and the amount of assistance available and received? For example, by prioritizing programs to assist homeowners over those that assist renters, a grantee may not have

enough funding to meet the unmet needs of renters, including those less able to prepare for, respond to, and recover from the impacts of disasters.

c. What CDBG-DR rules, waivers, or alternative requirements, if any, should be modified to further prevent an “unjustified discriminatory effect” (i.e., interests can be served by another practice with a less discriminatory effect) based on race or other protected class in the implementation of CDBG-DR funding to address disaster-related unmet needs (recognizing that HUD has no authority to waive or specify alternative requirements for statutes and regulations related to fair housing, nondiscrimination, labor, or the environment)?

d. What barriers impede grantees’ ability to allocate resources equitably? What barriers do protected class groups, vulnerable populations, and other underserved communities face in accessing, applying for, and receiving CDBG-DR assistance in a timely manner?

e. What additional guidance, data, or support can HUD provide to help grantees comply with fair housing and civil rights requirements and allocate resources equitably across housing types?

f. What challenges do grantees face in complying with their obligation to ensure meaningful access for individuals with limited English proficiency or effective communication for individuals with disabilities? What tools or resources could HUD provide to facilitate compliance with these obligations?

g. Congress has recently identified Indian tribes as eligible CDBG-DR grantees but there are currently no Indian tribes in HUD’s CDBG-DR portfolio. Are there revisions to HUD’s CDBG-DR policies that should be considered to capture tribal recovery needs more effectively? (Please also see the request for information from the public on the need for any revisions to HUD’s allocation formula to better capture tribal recovery needs published elsewhere in today’s *Federal Register*.)

h. What barriers impede grantees’ ability to design and utilize buyout programs, including incentives, to best serve protected class groups, vulnerable populations, and other

underserved communities? What CDBG-DR rules and requirements, if any, should be modified or eliminated to ensure that grantees advance equity in their community-driven relocation activities?

6. Incorporating Mitigation and Resilience Planning.

a. Are there CDBG-DR rules, waivers, or alternative requirements, and/or policies that prevent or limit grantees' focus on mitigating the impacts of climate change, particularly for those areas disproportionately impacted by climate change? If so, please describe.

b. How can CDBG-DR's rules, waivers, or alternative requirements or policies be modified or eliminated to encourage grantees to use CDBG-DR funds to invest in activities that incorporate resilience and mitigate the impacts of climate change?

c. What more can HUD do to encourage grantees to integrate long-term disaster recovery and mitigation planning into other existing federal, state, and local planning requirements?

7. Replacing Disaster-damaged Housing Units, Minimizing Displacement, and Incentivizing Affordable Housing Development.

Should CDBG-DR notices continue to waive and provide alternative requirements for the one-for-one replacement housing requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) (42 U.S.C. 5304(d)(2)(A)(i) and (i) and (d)(3)) of the HCDA and 24 CFR 42.375 for disaster-damaged owner-occupied lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation?" To expedite recovery, HUD waives this requirement for disaster-damaged owner-occupied units that meet the grantee's definition for "not suitable for rehabilitation." CDBG-DR grantees have the discretion to define "not suitable for rehabilitation," but must include their definition in their action plan for disaster recovery.

a. How can CDBG-DR rules, waivers, or alternative requirements be modified or eliminated to ensure that grantees are mitigating natural hazard risks (*e.g.*, sea level rise, high winds, storm surge, flooding, volcanic eruption, and wildfire risk), while also minimizing

displacement of members of families, individuals, or entities such as businesses, farms, or nonprofit organizations from their homes and neighborhoods?

b. What additional relocation, acquisition, and replacement housing waivers and alternative requirements should HUD consider that would assist and expedite community efforts to reduce future risk while minimizing displacement and ensuring fair treatment and protections to those whose property is acquired or who must move due to a CDBG-DR funded activity? For example, recent CDBG-DR notices waive (and provide alternative requirements to) several provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (URA), section 104(d) of the HCDA, and related CDBG programmatic requirements.

8. Modifying Green and Resilient Building Codes and Standards.

a. Should the Department impose construction standards that require the use of CDBG-DR funds to adhere to current editions of the International Building Code (IBC), International Existing Building Code (IEBC), International Residential Code (IRC), International Wildland-Urban Interface Code (IWUIC), International Plumbing Code (IPC), International Mechanical Code (IMC), International Fuel Gas Code (IFGC), International Fire Code (IFC), ICC 500-14, ICC/NSSA Standard on the Design and Construction of Storm Shelters, and ICC 600-14 Standard for Residential Construction in High-wind Regions?

b. Should HUD better align its building code requirements for CDBG-DR and CDBG-MIT with those required by FEMA or other Federal agencies? If so, how?

Marion M. McFadden,  
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for Community Planning and  
Development.

